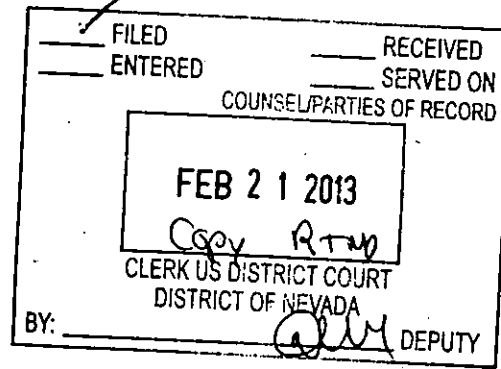


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Plaintiffs In Pro Se



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO DIVISION

JOSEPH P. CUVIELLO AND DENIZ
BOLBOL, individually,

Plaintiffs,

v.

STATE OF NEVADA, *ex rel.*, BOARD OF
REGENTS of the NEVADA SYSTEM OF
HIGHER EDUCATION *ex rel.*,
UNIVERSITY OF NEVADA, RENO
("UNR"); UNIVERSITY OF NEVADA,
RENO POLICE OFFICER JON
MARTINEZ, LAWLOR EVENTS
CENTER HEAD OF SECURITY MIKE
MCCLEARLY and DOES 1-10, in their
individual and official capacities, Jointly
and Severally,

Defendants.

Case No.: 3:12-cv-00529-LRH-(VPC)

**PLAINTIFFS DENIZ BOLBOL'S AND
JOSEPH CUVIELLO'S JOINT
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

1 **I. INTRODUCTION**

2 On February 6, 2013 Defendant State of Nevada, ex rel Board of Regents of the Nevada
3 System of Higher Education on behalf of the University of Nevada, Reno (hereinafter
4 "University"), filed a motion to dismiss Plaintiffs Deniz Bolbol's and Josephs Cuiello's first
5 Amended Complaint. Docket No. 15. Plaintiffs jointly present their opposition to Defendant's
6 motion.

7 **II. FACTS**

8 On October 1, 2011 Ringling Bros. Circus was performing at the Lawlor Events Center
9 located at the University of Nevada, Reno. Plaintiffs Joseph Cuiello and Deniz Bolbol travelled
10 to the University of Nevada, Reno to videotape Ringling Bros. Circus' treatment of animals.
11 While Plaintiffs were standing near the corner of East 15th Street and West Stadium Way
12 videotaping the animals they were told by University of Nevada, Reno police officer Jon
13 Martinez and Lawlor Events Center Head of Security Mike McClearly that they would be
14 arrested if they did not stop videotaping the animals from this location. Under the threat of arrest
15 and with no other location from which to adequately videotape the Circus' treatment of animals
16 Plaintiffs vacated the property and filed this lawsuit on October 1, 2012 alleging a violation of
17 their First Amendment Rights. Plaintiffs named as defendants University of Nevada police
18 officer Martinez, University of Nevada Police Department, Lawlor Events Center, Lawlor Events
19 Center Head of Security Mike McClearly and Does 1-10.

20 On January 9, 2013 the Board of Regents of the Nevada System of Higher Education
21 (NSHE) filed a motion to dismiss complaining that Plaintiffs did not properly name the
22 Defendants pursuant to Nevada's Revised Statute NRS 41.031(1). Docket No. 9. In response, on
23 January 24, 2013, Plaintiffs filed a First Amended Complaint (FAC) naming Defendants as
24 required by NRS 41.031(1). Docket No. 11.

25 On February 6, 2013 the University filed a second motion to dismiss based on Eleventh
26 Amendment immunity.
27
28

III. POINTS AND AUTHORITIES

Plaintiffs agree with Defendant that: (1) Eleventh Amendment immunity is generally available to the University;¹ and (2) a state agency is not considered a person for 42 U.S.C. § 1983 purposes.² However, the State of Nevada, by statute, has waived its Eleventh Amendment immunity and consented to have its liability determined in accordance with the same rules as are applied to civil actions against natural persons and corporations so long as the civil claims are in conformance with NRS 41.031(1): "The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law, as are applied to civil actions against natural persons and corporations..." Defendant University of Nevada also acknowledged this waiver in its first motion to dismiss, wherein it asked the Court to dismiss Plaintiffs' Complaint based solely on the fact that Plaintiffs did not properly name and serve the Defendants under NRS 41.031(1). Docket No. 9, p. 3:11-19.

Based on the University's first motion to dismiss Plaintiffs amended their complaint and named the Defendants according to the requirements of NRS 41.031(1). Defendant University implicitly acknowledges Plaintiffs are in conformance with the statute as they do not contend otherwise in their present motion.

If Defendant University believed that they were entitled to rely on Eleventh Amendment immunity despite Plaintiffs conformance with NRS 41.031(1) then Plaintiffs contend that Defendant's first motion to dismiss, relying on NRS 41.031(1), was a violation of Federal Rule of Civil Procedure (FRCivP) 11(b)(1), which states that a party may not present a written motion to the court "for any improper purpose, such as to harass, cause unnecessary delay, or needlessly

¹ See *Krainski v. State of Nevada*, 616 F.3d 963 (2010); "The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state." *Id.* at 967.

² See *Will v. Michigan Department of State Police*, 491 U. S. 58 (1989); "a State is not a person within the meaning of § 1983." *Id.* at 64.


1 increase the cost of litigation.”³ If Defendant believed they were entitled to immunity despite
 2 Plaintiffs conformance with NRS 41.031(1) Defendant’s first motion to dismiss served no
 3 legitimate purpose other than to harass Plaintiffs, cause unnecessary delay and to needlessly
 4 increase Plaintiffs’ costs of service. A party who violates FRCivP 11(b)(1) may be sanctioned by
 5 the court, which, on its own, may order a party to show cause why their conduct has not violated
 6 Rule 11(b). See FRCivP 11(c)(3).

7 IV. CONCLUSION


8 For the foregoing reasons Plaintiffs’ FAC should not be dismissed.

9
 10 Dated: February 20, 2013

11 By:


 DENIZ BOLBOL
 In Pro Se

12
 13 By:


 JOSEPH P. CUVIELLO
 In Pro Se

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 24 ³ “[W]hen the allegations in a complaint, however true, could not raise a claim of entitlement to
 25 relief, ‘this basic deficiency should . . . be exposed at the point of minimum expenditure of time
 26 and money by the parties and the court.’” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544,
 27 558 (2007) (citations omitted).
 28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My mailing address is 2912 Diamond Street, #365, San Francisco, CA 94131. On February 20, 2013, I served the following document(s) by the method(s) indicated below:

**PLAINTIFFS DENIZ BOLBOL'S AND JOSEPH CUVIELLO'S JOINT OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS
Case No. 3:12-CV-00529-LRH-(VPC)**

☒ by placing on this date a true copy of the document(s) listed above in a sealed envelope(s) with postage thereon fully prepaid to the address(es) set forth below, in a collection box regularly maintained by the United States Postal Service.

Gary A Cardinal
Assistant General Counsel
University of Nevada, Reno
1664 North Virginia Street/MS 550
Reno, Nevada 89557-0550
Attorney for Defendants

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 20, 2013 at San Mateo, California.



Mark Ennis